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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

No. [redacted]. 49

THE WESTERN UNION TELEGRAPH COMPANY,
Petitioner,

against

KATHARINE F. LENROOT, Chief of the Children's Bureau, United States Department of Labor.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, AND BRIEF IN SUPPORT THEREOF

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AUTHORITIES

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TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The above named petitioner respectfully prays that a writ of certiorari issue to review the decision of the United States circuit court of appeals for the second circuit handed down on March 3, 1944.

Jurisdiction

The jurisdiction of this court is invoked under section 24 (a) of the Judicial Code, as amended by the Act of February 3, 1925 (28 U. S. C. A., Sec. 347).

Opinions Below

The opinion of the district court for the southern district of New York is reported in 52 Fed. Supp. 142, but is also set forth in full in the record (pp. 24-37).

The opinion of the circuit court of appeals for the second circuit affirming the judgment of the district court was handed down March 3, 1944 and is not officially reported, but is set forth in full in the record.

Question Presented

The question presented is: Do the child labor provisions of the Fair Labor Standards Act apply to telegraph companies?

In construing the act, the courts below have answered that question in the affirmative.

Statutes Involved

The statutes involved are set forth in Appendix A to the accompanying brief.

Statement of the Case

Petitioner, which will now be referred to as Western Union, asks this court to review a decision of the circuit court of appeals for the second circuit, affirming a judgment (R. 40-42) of the district court for the southern district of New York, which enjoins Western Union from sending or delivering any interstate messages* for thirty days at

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* Not, as mistakenly stated by the court of appeals, from violating the act "by using messengers under sixteen", etc. The injunction is against "transmitting in interstate commerce or delivering for transmission in interstate commerce * * * telegraph or other messages * * * produced by or for defendant * * * in any establishment * * * in or about which within thirty days prior to the transmission * * * of such messages * * * there shall have been employed any employee under the age of sixteen years * * * ". R. folios 121-2.

least, and longer than that unless Western Union stops employing messengers under sixteen.

Nobody, we assume, certainly not the court or the plaintiff, expects or desires the injunction to be obeyed.

The real question is whether Congress, by the child labor provisions of the Fair Labor Standards Act, intended to compel Western Union to stop employing such messengers.

The framers of the House bill undoubtedly did so intend. The first twenty prints of the bill contained a specific prohibition of all child labor in commerce.* There is no dispute that this provision would have prevented the employment of fifteen-year-old telegraph messengers. But Congress refused to enact it, and the bill came out of Congress without any prohibition of child labor at all. The plaintiff's position is that she does not know why Congress refused to prohibit it. The circuit court says it does not know why.** But we urge that when the powerful and forceful organization which sponsored this child labor legislation drafts a prohibition and urges its adoption on Congress and Congress leaves it out, there can be only one explanation as to what Congress intended. The omission was not due to inadvertence, as plaintiff, in her brief in the court of

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* Section 10b of the House bill, as it went to conference, read:

> "No employer engaged in commerce in any industry affecting commerce shall employ any employee under any oppressive child labor conditions" (House Report 2738, 75th Congress, 3rd Session, page 24).

** The court says: "It must be admitted that it is not clear * * * " etc. The court also says that it was the design of the House to regulate child labor by national standards, and of the Senate to prevent one State from breaking down the standards of another by unregulated competition, and that "the House won". The House won as to wages and hours, but it certainly did not win as to the prohibition of child labor in commerce, which the conference committee, following the Senate bill, left out.

appeals (p. 23), was driven to suggest, or to bashfulness. It was because Congress did not think that particular thing should be nationally prohibited. Whatever its reason,* the intent of Congress that it should not be nationally prohibited is clear.

This court has said that the history of this legislation leaves no doubt that Congress chose not to enter areas that it might have occupied. *Kirschbaum* v. *Walling*, 316 U. S. 517, 522 (1942). It seems to be the position of the plaintiff, and the court seems to sustain it,** that the act should be construed and administered on the assumption that Congress, to the limit of its constitutional power, intended to make effective the prohibition which it refused to enact. Technically this result was reached in the following remarkable way:

There was another child labor provision in the bill which Congress did enact. This section provided that no "producer", manufacturer, or dealer should "ship" in commerce any "goods" produced (not by child labor, but) in any establishment where child labor had been employed within thirty days. "Goods" are defined as including all subjects of commerce; "produced" is defined to include "handling * * * or in any other manner working on" goods; but "ship" is not defined and is used in its natural sense. Notwithstanding which the plaintiff contended and the courts below have held that a telegraph company violates this prohibition if it employs child labor, because telegrams by the definition are goods, the telegraph company by the definition is a producer, and most astonishing of all the telegraph company without benefit of any artificial definition "ships" its telegrams in commerce.

Obviously the framers of the bill did not intend this second prohibition to apply to telegraph companies or to other service operations of public utilities not producing and selling subjects of commerce for consumption in com-

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* We think the reason is plain enough. Brief, pp. 12, 19.

** See brief, p. 18.

petition with rival producers. Employment of child labor by such utilities in commerce was taken care of in the House bill* by the prohibition first mentioned (which was not enacted). If both prohibitions had been enacted Western Union could have been convicted for violating the first mentioned, but no one would have dreamed of suggesting that a second count in the indictment for violation of the prohibition against shipping goods could have been sustained. It is clear from the legislative history that the prohibition as to the shipment of goods was intended by Congress to mean what the framers of the bill meant by it, and nothing more. *The intention was to prevent the channels of interstate trade from being used to secure a competitive advantage to producers who employed child labor over their rivals who refrained from employing such labor, either voluntarily or because of the strict child labor laws of their particular States.* See *U. S.* v. *Darby*, 312 U. S. 100, referred to in the brief (p. 13).

There was no national declaration of policy in the act with respect to child labor. Congress did not prohibit child labor either in commerce or in the production of goods for commerce, and did not declare that the channels of commerce were to be regarded as "polluted" by either. Goods produced by child labor are not banned from commerce like lottery tickets; they may be shipped in commerce under the same conditions as any other goods produced in the same establishment: thirty days after the child labor ceases. Goods produced by employees whose wages or hours have violated the prohibitions in the Act cannot, on the contrary, be shipped in commerce at all, sec. 15(a)(1). Except to prevent competitive advantage in interstate trade, the regulation of child labor, like the regulation of divorce,

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* The Senate bill as passed did not prohibit any child labor, or define any child labor as "oppressive," or include it in the definition of "substandard" labor conditions. Conference Report (No. 2738, 75th Congress, 3d Session) p. 13 et seq.

was purposely and deliberately left by Congress where it was before, in the several States, over the opposition of those who contended that it should be governed by a national, uniform rule.

In the accompanying brief we shall show shortly that, apart from the clear intent of Congress not to cover this subject by a Federal rule, the words used would be wholly inappropriate to express a contrary intention. The prohibition has penal as well as civil sanctions. No reasonable group of men operating a telegraph enterprise could possibly have anticipated, on reading these words, that their traditional method of operation must be changed. Nor, on the civil side, could Congress possibly have intended to authorize a court to put the Western Union completely out of business for thirty days.

It will be shown, shortly, that telegrams are not goods, that a telegraph company is not a producer, and that telegrams are not and cannot be shipped, in commerce or otherwise.

Reasons for Granting the Writ

The decision below is wrong, and the question is of public importance in connection with the construction and administration of the act. It is important that the rights of the State and the family should be preserved and not superseded where Congress has evidenced its intention to preserve them. It is also important to correct the error because of its harmful effect on the telegraph company's part in the war effort. The court will take judicial notice that there is a manpower shortage which is seriously affecting the national telegraph service as well as other industries, and the latest report of the Federal Communications Commission to the Board of War Communications, excerpts from which are attached to the brief, shows that the bottleneck which is most difficult to overcome, and which has been growing worse instead of better, is due to the shortage of messengers. All messengers are hard to get and keep; there

is less difficulty with messengers of fifteen, not because the pay is less, for that is subject to the same minimum, but because after sixteen the boys are attracted to the war industries, with whose inflated wage scales the telegraph company, which has not been allowed a general rate increase for more than twenty-five years, can only with difficulty compete. If forbidden to fill the gaps in the ranks with younger boys the present delays will be accentuated and prolonged.

If for no other reason the case should be reviewed because of the form of the judgment. An injunction which neither the plaintiff nor the court could possibly permit to be obeyed must be erroneous.

For all these reasons the case presents an important question of Federal law which has not been, but should be, settled by this court.

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BRIEF IN SUPPORT OF PETITION

Statement

The Fair Labor Standards Act was passed June 14, 1938. Western Union, which operates in all the States, necessarily employs many thousands of telegraph messengers, and a considerable proportion of them are under sixteen. There appeared to be no doubt that the child labor provisions of the Act were not intended to apply to telegraph companies, and accordingly no change was made by Western Union in its practice in this respect. Four years after the passage of the Act, in August 1942, the plaintiff brought this civil suit to enjoin Western Union from violating the Act.

The following quotation from the opinion of the circuit court of appeals summarizes the facts accurately and fully enough for all present purposes:

> "The case was tried upon stipulated facts, most of which it is not necessary to state, as the general

nature of the defendant's business is so well understood. All that we need say is that over eleven percent of the telegraph messengers employed by the defendant are under sixteen years of age, and that a small percentage of its motorcar drivers are between sixteen and eighteen. Both sides moved for summary judgment, since the outcome depended altogether upon the meaning of the statute; and the judge, believing defendant to be within it, granted judgment for the plaintiff.

* * * * * *

"The sender either writes out his message on paper and delivers it to one of the defendant's messengers, or delivers it himself at one of the defendant's offices; or he dictates or telephones it to an employee at an office, who takes it down on paper in shorthand, or types it. The message so received never leaves that office; the addressee never sees it. Another employee—or perhaps the same one—either uses it as a text for pressing a key in suitable dots and dashes, having a conventional significance to him and to another employee at the opposite end of a wire; or as a text for manipulating some other suitable device—like a 'teletype'—by which equivalent movements will appear upon a similar device at the end of a wire. In either case nothing can be said to be 'sent' between the offices except pulsations of electrical current, which are not only not the sender's message, but would be totally incomprehensible to him or to the addressee, if either could perceive them. When these have been transmitted, they are either translated, if they are in code, or transcribed, if they are not; and the message so resulting is delivered either by messenger or by telephone to the addressee. From the foregoing it is at once apparent that there is not the least similarity between what the defendant does and the transportation of goods by a common carrier".

Specifications of Error Relied On

The circuit court of appeals erred in holding:

1. That Congress, by the child labor provisions of the Fair Labor Standards Act, intended to require telegraph companies to stop employing messengers under sixteen.

2. That telegrams are "goods" within the meaning of that act.

3. That a telegraph company is a "producer" within the meaning of that act.

4. That telegrams are "shipped" in commerce within the meaning of that act.

5. That Western Union should be enjoined from sending or delivering interstate telegrams for thirty days.

ARGUMENT

Except to equalize competition in interstate trade it was the intent of Congress to leave the employment of child labor to regulation by the States.

The plaintiff conceded on the argument and the court concedes in its opinion that equalizing competition was the purpose of the Senate. The court says that "the House won". But so far as child labor was concerned, the only difference between the Senate and the House bills was that the House bill prohibited it and the Senate bill did not. Since the conference committee left out the prohibition and Congress passed the bill without it the statement that the House won—on this point—is the reverse of the truth. The task of a conference committee usually involves compromise. The House carried its main point as to wages and hours, but the Senate prevailed as to child labor.

Before the bill was introduced child labor was a family matter, subject to regulation by the States but by no one else. The attempt of the framers of the House bill to induce Congress to make it the subject of a uniform national rule (except to the extent of equalizing competition in interstate trade) failed. There was no declaration of any national policy on the subject. The Act defines "oppressive" child labor, in substance, as any child labor which the Children's Bureau does not approve, but no national policy can be established by a disagreeable word in a definition. The Senate conferees, who presumably opposed any national prohibition of child labor, were no doubt glad to concede the epithet in exchange for no prohibition (Paris is worth a Mass)*; and in the House the definition had been geared to the theory of that bill, which did contain the prohibition, so that the definition had been appropriate. At any rate, when the Act came out of Congress with no prohibition of child labor, the extent to which such labor is to be permitted was clearly left, as it was before, to the family and to local laws.

Western Union did not contend, as the circuit court of appeals in its opinion seems to imply, that if the prohibition which Congress did adopt with respect to the shipment of goods produced in establishments which employed child labor fairly applied, the violator could escape its effect by showing that he was engaged in commerce. But we did contend that if Congress had meant to include such companies as ours it would have enacted the prohibition against child labor in commerce and not left its intent to be tortured out of a prohibition obviously intended solely to eliminate unfairness in interstate competition between sellers of consumer goods.

For the wage and hour provisions of the act, besides the straight prohibitions of substandard pay and hours, con-

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*There was no such definition in the Senate bill when it went to conference.

tained the same prohibition* with respect to the shipment of goods which alone of the child labor provisions survived the action of Congress. And as to the meaning and scope of that prohibition this court has said (italics ours):

> "Section 15(a)(1) prohibits, and the indictment charges, the shipment in interstate commerce of goods produced for interstate commerce by employees whose wages and hours of employment do not conform to the requirements of the act. Since this section is not violated unless the *commodity shipped* has been produced under labor conditions prohibited by section 6 and section 7, the only question arising under the commerce clause with respect to such shipments is whether Congress has the constitutional power to prohibit them. * * * The motive and purpose of the present regulation are plainly to make effective the congressional conception of public policy that *interstate commerce should not be made the instrument of competition in the distribution of goods produced under substandard labor conditions*, which competition is injurious to the commerce and to the States from and to which the commerce flows * * *. As we have said the evils aimed at by the act are the spread of substandard labor conditions through the use of the facilities of interstate commerce for *competition by the goods so produced with those produced under the prescribed or better labor conditions* * * *. Congress, to obtain its objective in the suppression of nation-wide *competition* in interstate commerce by goods produced under substandard labor conditions, has made no distinction as to the volume or amount of shipments * * *".
>
> *U. S.* v. *Darby*, 312 U. S. 100, 115, 122, 123 (1941).

Suppose Congress had stricken out not only the prohibition against child labor in commerce, but also the prohibitions against substandard wages and hours, and had merely

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* Except that such goods were barred from commerce forever, while child-labor-establishment goods, whether produced by child labor or not, could be shipped in thirty days if the child labor ceased.

defined substandard wages and hours and provided that no producer, manufacturer or dealer should ship in commerce any goods produced in an establishment where substandard wages and hours prevailed. Would anyone argue that the act in that form would have applied to the wages and hours of telegraph employees? Yet as to child labor that is all that there is in the Act.

Telegrams are not "goods"

No one would suppose that they were except for the artificial definition:

> "'Goods' means goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or *subjects of commerce* of any character, or any *part or ingredient thereof*, but does not include goods after their delivery into the actual physical *possession of the ultimate consumer* thereof other than a producer, manufacturer, or processor thereof".

The argument is that telegrams come under this definition because they are "subjects of commerce", and of course they are. But what "goods" Congress meant must be determined not only from the definition but from the nature of the prohibition and the object which was to be accomplished. The goods with which Congress was concerned were goods (1) with parts or ingredients; (2) which are to be delivered into the actual physical possession of a consumer; and (3) which in their nature are susceptible of being shipped. A subject of commerce which fulfills none of these requirements may be goods, but cannot be the sort of goods which Congress had in mind.

We insist on no distinction between tangible and intangible subjects of commerce. It may well be that the insertion of "subjects of commerce of any character" was intended to make it clear that the prohibition applied to intangibles as well as tangibles. We do not dispute that the production and sale of gas or power would come within the

act. But it is plain that *what Congress had in mind was some res, tangible or intangible, which is produced, transported and sold to be consumed, in competition or potential competition with other sales of similar products.* Only in that way can the clear intention of Congress to prohibit only competitive advantages in interstate trade be realized.

A telegraph company is not a producer

It is not contended that Western Union is a manufacturer or dealer. It comes within the act if it is a producer or not at all. No one would say that it is a producer except for the artificial definition:

> "'Produced' means * * * in any * * * manner worked on * * *; and * * * an employee shall be deemed to have been engaged in the production of goods if such employee was employed in * * * handling, transporting or in any other manner working on such goods * * *".

But this definition must be read against a background of common sense. That it cannot mean literally what it says in all cases is evident. Section 15 (a)(1) provides that:

> "No provision of this act shall impose any liability upon any common carrier for the transportation in commerce in the regular course of its business of any *goods not produced by such common carrier* * * *".

If everyone who handles goods is a producer, every carload of freight handled by a railroad company is produced by the railroad company, and there could therefore be no such thing as freight which the railroad company did not "produce", and consequently no exemption. More absurd still: if a railroad company employed child labor in its establishment no goods "produced" in its establishment (which includes all goods handled by it, by the literal terms of the definition) could be shipped in commerce for thirty days, and an injunction closing down the operations

of the railroad, like this injunction closing down the operations of the telegraph company, would be authorized.

It is perfectly evident what the meaning and scope of the definition must be. It was intended to take care of the ordinary case in which A manufactures material and gives it to B to process or package in order to put it in merchantable condition. Without the definition B would say that the goods were not produced by him. The function of the definition is to preclude that claim.

A telegraph company does not "ship" its telegrams

There is no artificial definition of "ship". The word is used in its natural sense. A telegraph company is not a carrier, *Primrose* v. *Western Union*, 154 U. S. 1. In the ninety years of Western Union's existence no statute aimed at carriers has ever been held to include telegraph companies except where they are specifically mentioned by name. The Mann-Elkins amendment to the Interstate Commerce Act of 1910* brought telegraph companies for the first time under the jurisdiction of the Interstate Commerce Commission by providing that they should be "deemed to be common carriers for the purposes of this act", and "for the purposes of" the Communications Act they are defined conveniently as carriers, without changing their status as it was under the act of 1910. They are not carriers, either common carriers or contract carriers, for any other purpose. Telegrams are transmitted, never shipped. Even the physical piece of paper containing the message, which may move in commerce from the last telegraph office to the addressee, cannot possibly be said to be *shipped* in commerce. A person not a carrier transporting his own property across a State line or otherwise does indeed transport it but certainly does not ship it. If Congress had actually intended to include telegraph messengers in the act, a court should require more appro-

* 36 Stat. 539.

priate language than this before applying criminal sanctions, or the civil sanction of complete interruption of the industry. Before the lower courts spoke no counsel could reasonably have advised a telegraph executive that this language applied to him, nor could a reasonable executive have believed his counsel if he had been so advised.

Neither district court nor circuit court of appeals gave any reason for the conclusion that telegrams are "shipped".

The district court (Judge Rifkind) found this question "troublesome". But he was still under the impression, wholly erroneous as we have seen, that the broad policy of the act, as it finally passed, was the same as the policy of the framers of the House bill, namely, "to keep the streams of interstate commerce undefiled by the products of child labor" (R. fol. 91). He admits that "ship" is not the proper word, and erroneously states that this court has held that telegraph companies are engaged in "transportation" (fol. 90)*. Ship, he says, is the correct word with respect to movements by rail, by air or by truck (fol. 90); and so, without more, he leaps to the conclusion:

> "I do not think that Congress intended to *limit* the application of the act to the conventional modes of shipment" (fol. 91).

The court of appeals gave only one reason for concluding that telegrams are shipped. The circuit court of appeals for the second circuit is a great court, and is usually right. They realized that this point was essential to the judgment. It must be assumed that the reason they gave—the only reason they gave—was the best one they could think of. We record that reason in the court's own words and we respectfully urge that it is not a good one:

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* The court of appeals says that "there is not the least similarity between what the defendant does and the transportation of goods by a common carrier."

> "Last, we have to say whether, assuming that a message received for transmission is 'goods,' and that the defendant 'produces' it, it also 'ships' the message, when it sends the pulsations over the telegraph wires. Although that is indeed an inappropriate word to apply to 'intangibles,' its unfitness for the most part disappears, once we treat messages as 'goods.' Certainly we should stultify ourselves, having gone so far, if we were to refuse to understand it as covering what is here involved."

The court had indeed gone far, but it should never be too late for repentance.

Plaintiff's argument as to why child labor was not prohibited.

Plaintiff's brief in the court of appeals said:

> "Prior to the conference report every print of the bill except one prohibited the employment of oppressive child labor in commerce * * *. There was no such provision it is true in the form in which the bill first passed the Senate, but this exception is not material for present purposes because it proceeded on the theory, later rejected, that Congress should not set its own standards for child labor but should merely supplement State laws by prohibiting interstate sales of goods made by children under conditions outlawed by the State of destination (81 Congressional Record 7949-7951). Opinion was apparently unanimous that *if Congress was to set a single national minimum standard* it should do so both for the production of goods for commerce and for commerce itself" (pages 20-21). (Italics ours.)

The "apparently" is the plaintiff's. There is no supporting authority or reference. The Senate decided not to set a national child-labor standard for commerce. The conference committee sustained the Senate. We cannot suppose that the managers on the part of the House were asleep or indifferent; nor can we accept the suggestion that the omission of the prohibition which the House desired

and the Senate did not was due to "inadvertence" on the part of the conference committee, as plaintiff's brief suggested on page 23. Even if it was inadvertence, a national policy cannot be established by an inadvertent failure to declare it.

The conference committee did not, it is true, state expressly that omitting the child-labor prohibition was a concession by the House to the Senate. The conference report says that the omission of the prohibition was "in view of the omission from the conference agreement of the principle of section 6 of the House amendment"—which left it to the Secretary of Labor to determine what industries affected commerce. But since there was no prohibition in the Senate bill, and this prohibition in the House bill was omitted, and since the House had prevailed over the Senate in connection with wages and hours, the fact that a compromise took place is evident. It is the more evident when it is recalled that the original Senate bill had contained all the child labor prohibitions, that it had been reported favorably by the Senate Committee on Education and Labor, and that the Senate nevertheless struck out the prohibition of child labor in commerce. It will not be claimed that this was inadvertent. It may fairly be assumed, therefore, that the Senate conferees were insisting on the Senate's policy in this respect as opposed to the policy of the House.

The importance of the question to the telegraph company's share in the war effort.

The increase, because of war conditions, in the traffic load which must be handled by telegraph is a matter of common knowledge. So is the manpower shortage which makes it impossible to handle the additional load with prewar speed. There is no lack of adequate facilities. So far as operators are concerned, they are being trained in great numbers and good progress has been made with respect to speed of service in transmission from office to office by wire. But the messenger shortage still persists and has

even been growing worse instead of better. Excerpts from the report of the Federal Communications Commission to the Board of War Communications for the month of January 1944 are attached (Appendix B).

Of the telegraph traffic handled by Western Union in 1943 probably over seventy percent consisted of messages for the Government or for essential war industries. Western Union itself is of course an essential war industry. If the law does not require it, our efforts should not be handicapped by requiring any depletion of the present messenger force or prohibiting replacements or additions to it from boys of fifteen who are not yet eligible to earn the higher wages offered by war plants.

Conclusion

Certiorari should be granted.

Respectfully submitted,

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Appendix A

APPLICABLE PROVISIONS OF THE FAIR LABOR STANDARDS ACT OF 1938 (52 Stat. 1060)

Section 15a-4 (29 U. S. C. A. Section 215a-4) prohibits the violation of "any of the provisions of Section 12" (29 U. S. C. A. Section 212), the operative words of which are (italics ours):

> * * * No producer, manufacturer or dealer shall *ship* or deliver for *shipment* in commerce any *goods produced* in an *establishment* situated in the United States, in or about which, within thirty days prior to the removal of such *goods* therefrom, any oppressive child labor has been employed; * * *. (Section 12a; 29 U. S. C. A. Section 212a)
>
> Sec. 3 (i). "Goods" means goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or *subjects of commerce of any character*, or *any part or ingredient thereof*, but does not include goods after their delivery into the *actual physical possession of the ultimate consumer* thereof other than a producer, manufacturer, or processor thereof.
>
> Sec. 3 (j). "Produced" means produced, manufactured, mined, *handled, or in any other manner worked on* in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, *handling, transporting, or in any other manner working on* such goods, or in any process or occupation necessary to the production thereof, in any State.
>
> Sec. 3 (l). "Oppressive child labor" means a condition of employment under which (1) any employee under the age of sixteen years is employed by an employer (other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of sixteen years in an occupation other than manufacturing

or mining) in any occupation, or (2) any employee between the ages of sixteen and eighteen years is employed by an employer in any occupation which the Chief of the Children's Bureau in the Department of Labor shall find and by order declare to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being;" * * *. (29 U. S. C. A. Section 203)

Sec. 15. No provision of this act shall impose any liability upon any common carrier for the transportation in commerce in the regular course of its business of *any goods not produced by such common carrier*, and no provisions of this act shall excuse any common carrier from its obligation to accept any goods for transportation. * * *. (29 U. S. C. A. Section 215).

Sec. 17. The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of section 20 (relating to notice to opposite party) of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914, as amended (U. S. C., 1934 edition, Title 28, sec. 381), to restrain violations of section 215 of this title (29 U. S. C. A. § 217).

Appendix B

REPORT OF FEDERAL COMMUNICATIONS COMMISSION January, 1944 to the Board of War Communications on telegraph service made pursuant to Board Order #25-C (Pages 22-25)

"SECTION V—TERMINAL OFFICE SERVICE

As noted in the September 1943 Report, the terminal office speed of service study required under the Commission's Order measures the performance of delivery offices by reference to the percentage of business routes sent out for delivery within certain specified intervals from the time of receipt of the oldest message in each route at the delivery office. The interval measured takes into account not only the routing time, or elapsed time at the delivery desk, but the entire elapsed time at the delivery office. Allowing two minutes for the handlings within the delivery office prior to the receipt at the delivery desk, which the Commission felt was adequate, and adding to that two minates the established routing time of ten minutes for business messages to be delivered within one mile of the office, delivery office performance was measured in the September Report in the light of the ability of the offices to send out 85 percent of their business routes within 12 minutes.

In the case of the Western Union study commented upon in the September Report,[5] only 9 of the 24 cities reporting

[5] The delivery office speed of service studies at Postal offices were discontinued after the merger of the two companies because the messenger operations of the large majority of the Postal offices were merged with those of the Western Union delivery offices. The former Postal offices continuing independent messenger delivery operations after the merger are to be included in the Western Union study after a period not to exceed 60 days following the merger, during which time these Postal offices will be instructed in the Western Union speed of service procedure to be thereafter followed at those offices in making the study prescribed by Commission Order No. 113.

were able to dispatch 85 percent or more of such routes within 12 minutes during June, which was regarded as unsatisfactory service. That the terminal office service of succeeding months has further deteriorated, however, can be seen from the following table showing the number of cities in which 85 percent or more of the business routes were dispatched within 12 minutes:

Month	*Number of cities in which 85% or more of business routes for delivery within one mile of the office were dispatched within 12 minutes*
June	9
July	7
August	7
September	4
October	5
November	4

In a number of cities each month less than 50 percent of the business routes were dispatched within 12 minutes. These cities are set forth in the table below:

Month	*Cities reporting less than 50% of their business routes dispatched for delivery within one mile of the office within 12 minutes*
June	Baltimore (49.5%): Detroit (41.6%): San Francisco (49.1%)
July	Dallas (47.9%): St. Louis (45.9%)
August	Detroit (37.5%): San Francisco (47.7%)
September	Buffalo (42.8%): Dallas (43.2%): Detroit (11.5%): New York (44%)
October	Denver (36%): Detroit (18.6%): New York (41.5%): St. Louis (48.7%)
November	Detroit (31.8%): Miami (31.5%): New York (40.1%)

It will be noted that Detroit reported the poorest terminal office handling of any city, sending out only 41.6 percent of its business routes within 12 minutes during June, 37.5 percent in August, 11.5 percent in September, 18.6 percent in October and 31.8 percent in November.

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While the month of September is ordinarily a critical month in messenger turnover because many messengers leave the employ of the telegraph company to return to school or to accept positions in other industries vacated by persons returning to school, the performance statistics reported for terminal office handling during the past six months represent, in general, very unsatisfactory service. While message center office speed of service has improved in the past five months, as shown in Sections III and IV of this report, the poor messenger delivery service reported during the same period would indicate that any improvement in message center performance has been offset, insofar as messages requiring messenger delivery are concerned, by the deterioration that has taken place in the speed of terminal office handling rendered by delivery offices.

The delivery office performance statistics demonstrate that at present one of the most fruitful means of speedily raising the level of telegraph service generally lies in improving the prompt dispatch of messages from delivery offices."